If not, to what quantum of bonus are the workers entitled to for the abovesaid two years?".

The Reference was registered as I. D. No. 71 of 1967 and notices were issued to the I Party to file claim statement in support of their demand. The I Party filed ihe claim statement on 25th November 1967 supporting the demands noted in the Order of Reference. The I Party has been represented by Sri P. B. Tellicherikar, Secretary, Karnataka Handloom and General Workers' Union, Maidan Cross Road, Mangalore-1. The II Party was called upon to file the Counter Statement. In the meanwhile the I Party wrote a letter dated 16th December 1967 stating that the Union is not going to press the Reference and it withdraws the dispute. By the same letter the I Party requested for orders on this application. In view of the fact that the I Party workmen are not anxious to press this Reference and in view of the fact that they sought permission of this Court to withdraw this Reference, the Reference is rejected. In the circumstances of the case, each party will bear its own costs.

A. PANCHAKSHARIAH,
Presiding Officer,
Industrial Tribunal.
Bangalore.
22-12-1967.

ORDER.

Bangalore, dated the 27th December 1967.

S. O. 42.—WHEREAS by State Government Order No. FCL 622, LLD 67, dated 17th October 1967, the Industrial Dispute between the Workmen and the Management of Pompie Rosario Weaving Establishment, Bendore well, Mangalore-2, was referred to the Industrial Tribunal, Bangalore, for adjudication;

AND WHEREAS the Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette.*

(No. FCL 622 LLD 67.)

By Order and in the name of the Governor of Mysore,

1735 G. G. PUROHIT, *Under Secretary.*

FOOD, CIVIL SUPPLIES AND LABOUR SECRETARIAT

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Dated this 8th day of December 1967.

Present

Sri V. C. Ramachandran, B.A. B.Sc., Presiding Officer

(London) Bar-at-Law

Complaint No. 20 of 1966.

in A.I.D. Nos. 6, 7 and 8 of 1966.

Complainant :—Sri Puttamadaih, c/o Sri Doddaiah, No. J 103, Shanbhogue Venkatappa Galli, Kumbarpet, Bangalore-2.

Vs

Opposite Party :—The Management of Bangalore Woollen, Cotton & Silk Mills, Ltd., Kempapur Agraharam Road, Bangalore-23.

Appearances.

For the Complainant :—Sri K. Subba Rao, Advocate, Bangalore.

For the Opposite Party :—Sri B. T. Sampath, Senior Labour Officer, Buckingham & Carnatic Mills, Ltd.

AWARD.

This is a Complaint under Section 33A of the Industrial Disputes Act, 1947, on an allegation that the Opposite Party *viz.*, the Management of the Bangalore Woollen, Cotton and Silk Mills, Ltd., Bangalore, are guilty of contravention of Section 33 of the said Act. The Complainant was an employee ever since 22nd June 1961 in the Opposite Party Mill and his services were terminated by an Order dated 15th November 1966 under Standing Order No. 12(1) on the ground that he was absent from work on account of chronic illness as evidenced by the E.S.I. Certificates.

The Complainant submits that he had served the Mill honestly and deligently without any blemish whatsoever, hnt nnfortunately when he was g ing on a Cycle on 30th Octob r 1966 at about 3 P.M. he fell down and got him-elf hurt. He was admitted as an inpatient in the E.S I. H spital from 31st October 1966 till 4th November 1966. He resumed work in the Mill on 5th November 1966 and continued to work till 14th November 1966 and on 15th November 1966 he was served with an Order terminating his services. There was an industrial dispute pending with this Tribunal relating to payment of Bonus etc, and the complainant is one of the workman concerned in that dispute. The Opposite Party had not sought either permission or approval of this tribunal for the action taken by them and hence they have not complied with the provisions of Section 33 of the Industrial Disputes Act and have contravened the said provisions. The Complainant admits that he was absent from work on the days alleged by the opposite party, but states that he was on Sick Leave and had produced the E.S I Certificates in respect of all those days. He contends that while he was under E S I treatment, his services cannot be terminated and the termination order is illegal and in violation of section 73 of the Employees State Insurance Act. He therefore prays that the Order of termination be set aside and he be reinstated in his original post with back wages and continuity of service and other benefits. He further submits that no enquiry has been held nor was he given any opportunity to meet the charges and his dismissal amounts to punishment for mis. conduct a punishment which has been passed in utter disregard of the principles of natural justice. The action of the Opposite Party is *mala fide* and has been done with ulterior motive to victimise the Complainant for the trade union activities as he is a member of the newly formed Trade Union known as the Binny Mills Employees Union.

2. The Complaint is resisted by the Opposite Party who contend that the Complainant had a very poor record of attedance and was habitnally absenting himself. He reported for duty on 5th November 1966 and continued to be on duty till 15th November 1966 when his services were terminated under standing order 12(1) for chronic absence from work on grounds of continued illness as evidenced by the E.S.I. certificates. The Opposite Party further contend that they were not obliged to obtain either permission of the tribunal or approval of the action taken against the Complainant. The provisions of section 33 of the Industrial

Disputes Act are not attracted as the Complainant was not discharged or dismissed on the ground of any misconduct by way of punishment. The Opposite Party further submits that this is a case of termination simpliciter at a time when the complainant was not in receipt of any medical benefit. There was no need to hold an enquiry as his services were not terminated for any misconduct, this being a case of termination simpliciter due to the complainant's chronic illness. The Opposite party further denies that there was any victimisation of the complainant. nor are they aware of the complainant's part in the trade union activities. The Opposite party denies all other allegations contained in the complaint and pray that the complaint be dismissed with costs.

3. The following issues are framed:—

"1. Whether the Opposite party was obliged to obtain permission of the Tribunal under Section. 33 (1) of the Industrial Disputes Act, 1917 before the Order of termination or approval of the action taken under Section. 33 (2) (b) of the Industrial Disputes Act?

2. Whether the action taken was under the terms of the contract of service under Standing Order 12 (1) and the provision of Section. 33 of the Industrial Dputes Act are not attracted?

3. Whether this is a case of termination simplicitor and not for any misconduct?

4. Wnether the complaint under Section. 33-A of the Industrial Disputes Act is not maintainable?

5. Whether the termination of services of the complainant is contrary to the Standing Orders or in violation of the E. S. I. Act and the regulations made thereunder?

6. Whether was no need to hold an enquiry by issuing to the Complainant, a Charge Sheet?

7. Whether the Complainant was victimised by terminating his services?

8. To what relief, if any, is the complainant entitled?"

It will be noticed at the outset that Sec. 33-A could be pressed into service only if there is a contravention of Sec. 33 of the Industrial Disputes Act. Sec. 33 requires that in any matter connected with the dispute the conditions of service cannot be altered and

the termination of the services cannot be made without the express permission in writing by the tribunal before which the dispute is pending. But with regard to any matter not connected with the dispute, the management have a right to alter the service conditions in accordance with the standing orders applicable to the workmen and they can even terminate the service of the workmen provided they obtain the approval of the authority before which the dispute is pending. It is common ground between the parties that an industrial dispute was pending before this tribunal when the services of the complainant were terminated. It is also common ground that the termination of the Complainant's services is not a matter connected with the dispute pending before the tribunal *viz.*, the question of bonus to which the workmen are entitled under the Payment of Bonus Act, 1965. Hence the only question that arises for consideration is where has been a contravention of Sec. 33 (2) of the Industrial Disputes Act. Sec. 2 (a) comes into play when the services conditions are altered, but if it is done in accordance with the Standing Orders, there is no contravention. In the instant case, if the termination is as punishment for misconduct, then the approval of the tribunal has to be taken and if it was not taken, it would clearly amount to a contravention of Sec. 33 (2) (b).

4. The question now reduces itself to whether the termination of the Complainant was as a punishment for misconduct or whether it is merely an alteration of the service conditions of the Complainant in accordance with the standing orders. The learned counsel for the opposite Party contended that it is not a termination as punishment for any misconduct but it is a termination under the standing orders on account of chronic absence from work on ground of continued illness as evidenced by the E. S. I. certificates. It is not disputed that the complainant has been absent from work frequently on account of illness. In 1962 he absented himself from work due to illness for 46½ days, in 1963 for 174½ days, in 1964 for 149 days, in 1965 for 89 days and in 1966 for 77½ days. All those days on which he was absent are covered by E. S. I. Certificates. Hence it cannot be denied that there has been on his part chronic absence from work due to illness. Absence from work due to illness which is covered by E S I. certificates cannot possibly amount to any misconduct. In order that a person should commit misconduct, there must be either a wrongful intention or mensrea or culpabale negligence. In other words a person commits a misconduct by an voluntary act. A person

falling continuously ill cannot be said to have any wrongful intention or has done any voluntary act. Continued illness is an involuntary act of nature for which a person cannot be said to be responsible. Hence a person falling continuously ill and therefore absenting himself from work on account of illness, cannot by any stretch of imagination be said to have committed a misconduct and therefore his termination for chronic absence on account of continued illness does not require any approval from the tribunal before which a dispute is pending. If his services are terminated according to standing orders, then it is a matter entirely between the management and the complainant in which the tribunal cannot interfere. The standing orders as applicable to the Opposite Party concern give a right to the management to terminate the services of the complainant under Sec. 12 (1) which runs as follows :—

"The employment of any permanent employee may be terminated by one month's notice or by payment of one month's wages in lieu of Notice."

This is the section under which the management terminated the services of the complainant after paying one month's wages in lieu of notice. Hence the action of the management is well within the rights conferred on them under Sec. 12 (1) of the Standing Orders and no approval is necessary to the action taken by them, as the termination of the complainant's services was not for a misconduct as contemplated in Sec. 33 (2) (b) of the Industrial Disputes Act.

5. The learned counsel for the Complainant urged that the word 'misconduct' in Sec. 31 (2) (b) is comprehensive enough to include (a) punishment of the workman for his trade union activities and b) colourable exercise of the powers conferred on the management under the standing orders. That contention no doubt, has considerable force and is also supported by a number of authorities. In 1966 (II) LIJ page 899, the Madras High Court has held that Sec. 33 is enacted for purposes of maintaining the *status quo* and preventing the relationship between the management and the workers getting worse during the pendency of the industrial dispute, and the word 'misconduct' should be given a wide meaning to include discharge or dismissal by the management for inadequate or unsustainable reasons (by way of victimisation or unfair labour practice). The law is therefore clear that if the complainant had been discharged as a punishment for his trade union activities, then the discharge

requires approval of the tribunal. Otherwise no approval is necessary if the management acted *b na fide* in exercise of the rights under the standing orders. The termination was not at a time when the Complainant was getting any sickness benefit and therefore Section 73 of the E. S. I. Act can have no application. The sickness benefit was given only till 4th November 1966 and from 5th November 1966 till 14th November 1966 the Complainant was in service, and the termination was during his service, and hence the termination was not during the period of sickness in order to attract the provisions of Section 73. Nor does Regulation 98 of the E S I. Act has any application as the termination was not during the period he was in receipt of the sickness benefit.

6. The only question that remains to be considered is whether the management acted *mala fide* whether they terminated the services of the Complainant for being engaged in trade union activities. In other words, the Complainant can succeed if he can show that his termination was the result of victimisation and unfair labour practice on the part of the management. That is a matter which has to be proved by the Complainant and the only evidence adduced is that of the Complainant himself without any corroboration either by other oral evidence or documentary evidence in support of it. The Complainant states that he was canvassing for a candidate in the P. F. election and that Krishnan and Kannan asked him not to canvass and said that he would meet the same fate as one Munirathnam, who was removed from service by the Company. That happened about 8 or 9 months prior to the termination of his services, under Ex. W1. In the first place that can hardly be a ground for terminating the services of the Complainant as, even if the allegation were to be true, that he canvassed for a particulur candidate in the Provident Fund Election, the management could not possibly have any grouse against him as that is a matter which does not affect the management in any manner. It is a matter concerning two unions of the Binny Mills in which the management cannot possibly be interested. Besides, Krishnan and Kannan have been examined by the management and they swear that they have never asked the Complainant not to canvass for one Varadappa in the elections. In my view that could hardly be a ground for the Management wanting to terminate the services of the complainant. Nor can any plea of discrimination hold good because the other employees mentioned by the Complainant have not been absent from work

on account of illness for the same period as the Complainant has been. It was urged by the learned counsel for the Complainant that on 15th November 1966 the Complainant was in the best state of health and that he was showing progress with regard to his attendance and that there was every likelihood of his showing better attendance in future and that he was not subjected to any medical examination by the Company's doctor before his services were terminated. In my view those contentions have no force because the termination was not due to the fact that he might not perform his duties in future, but was solely because of his past record which proved his unworthiness to be continued in the employment of the II Party. It is not within the perview of this tribunal to question the wisdom of the management in assessing the capabilities of its employees and they are the best judges as to who are fit to be in employment and who are not. So long as their assessment is made *bona fide*, and I have no reason to doubt that it has been made *bona fide* in this case, considering the past record of the Complainant in service, this tribunal will be very reluctant to interfere with the policy of the management in choosing their employees. At any rate, the victimisation alleged by the Complainant has not been established and hence the irresistible conclusion is that the management acted *bona fide* in taking action under Section 12(1) of the Standing Orders in terminating the services of the Complainant, for chronic absence due to continued illness.

7. My answer to the various issues are as follows:—

1. The Opposite party was not obliged to obtain permission of the tribunal under Section 33 (1) of the Industrial Disputes Act before the order of termination, or approval of the action taken under Section 33 (2) (b) of the said Act.

2 The action taken was under the Standing Order No. 12 (1) and the provisions of Section 33 of the Industrial Disputes Act, 1947, are not attracted.

3. This is a case of termination simplicitor and not for any misconduct.

4. The complaint under Section 33A of the Industrial Disputes Act, 1947, is not maintainable.

5. The termination of the services of the Complainant is according to the standing orders and not in violation of the E.S.I. Act and the Regulations made therein.

6. There was no need to hold an enquiry by issuing a charge sheet to the Complainant.

7. The Complainant was not victimised by terminating his services.

8. In the result I make the following Award :—The Complaint filed by the Complainant under Section 33-A of the Industrial Disputes Act, 1947, is not maintainable and it is hereby dismissed. There will however be no order as to costs.

V. C. RAMACHANDRAN,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore-2.

ORDER

Bangalore, dated 20th December 1967.

S. O. 43.—WHEREAS before the Additional Industrial Tribunal, Bangalore in complaint was made under Section 33-A of the Industrial Disputes Act, 1916 (Central Act No 14 of 1947) by Sri Puttumadiah, C/o. Sri Doddiah, No. J 103, Shanbhogue Venkatappa Galli, Kumbarpet, Bangalore-2, alleging that has services were terminated by the Management of Bangalore Woolen, Cotton and Silk Mills, Ltd., Bangalore, on the ground that he was absent from work on account of Chronic illness.

AND WHEREAS the said Additional Industrial Tribunal, Bangalore adjudicated upon the said complaint and submitted its award to the State Government as required under Section 15 read with Section 33-A said Act.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947), the Government of Mysore hereby direct the publication of the said award in the *Mysore Gazette*.

[No. FCL 925 LID 67.]

By Order and in the name of the Governor of Mysore,

1716 G. G. PUROHIT, *Under Secy.*